

SEP 21 2007

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

Federal Communications Commission
 Office of the Secretary

In the Matter of)	EB Docket No. 07-13
)	
DAVID L. TITUS)	FRN No. 0002074797
)	File No. EB-06-IH-5048
Amateur Radio Operator and Licensee of)	
Amateur Radio Station KB7ILD)	

To: Richard L. Sippel
 Chief Administrative Law Judge

**JOINT MOTION FOR APPROVAL OF
 PROTECTIVE ORDER**

1. The Enforcement Bureau and David L. Titus ("collectively, the "Parties") jointly request that the Presiding Judge approve the attached proposed Protective Order for use in this proceeding. In support whereof, the following is shown.

2. The Parties have drafted the proposed Protective Order using the Commission's Model Protective Order and modifying it appropriately for use in this proceeding.¹ While the order gives the Presiding Judge plenary authority to determine whether certain records should remain confidential during the hearing, it protects such records from inappropriate disclosure during the discovery phase of this proceeding. The Parties believe that adoption of the Protective Order is in the public interest because it allows for the unfettered use of otherwise confidential materials within the context of this

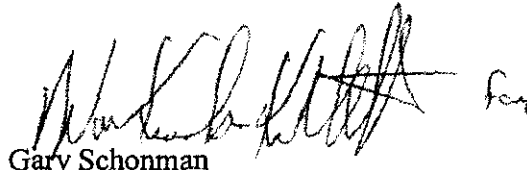
¹ See *Examination of Current Policy Regarding the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 (1998), petition for reconsideration granted in part and denied in part, Memorandum Opinion and Order, 14 FCC Rcd 20128 (1999).

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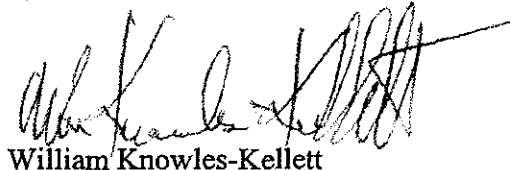
proceeding while protecting the interests of the sources and subjects of the documents
from inadvertent disclosure to the public.

3. Mr. Titus, by his counsel, David S. Marshall, has reviewed the proposed Protective Order and has authorized the Bureau to file this joint motion on his behalf. Accordingly, the Parties request that the Presiding Judge grant this joint motion and approve the attached Protective Order.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Gary Schonman", with a stylized flourish at the end.

Gary Schonman
Special Counsel, Investigations and Hearings Division

A handwritten signature in black ink, appearing to read "William Knowles-Kellett", with a stylized flourish at the end.

William Knowles-Kellett
Attorney, Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

September 21, 2007

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PROTECTIVE ORDER

This Protective Order is intended to facilitate and expedite the use of certain documents in the captioned hearing proceeding which contain confidential, non-public information relating to the criminal convictions of David L. Titus. This Protective Order reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated in the context of the captioned hearing proceeding. The Order is not intended to constitute, and does not constitute, a resolution on the merits of whether such information identified herein as "Confidential Information" would be releasable to the public by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

1. Definitions

- a. "Titus" or "Licensee" means David L. Titus, the licensee in the captioned hearing proceeding.
- b. "Authorized Representative" shall have the meaning set forth in Paragraph 7.
- c. "Commission" means the Federal Communications Commission, any delegated authority thereof, and specifically includes the presiding Administrative Law Judge in the captioned hearing proceeding.
- d. "Confidential Information" is limited to information that (a) relates to the criminal convictions of Titus and (b) is not routinely available to the public.
- d. "Declaration" means Attachment A to this Protective Order.
- e. "Reviewing Party" means each of the two parties in the captioned hearing proceeding.

f. "Submitting Party" means either Titus or the Bureau a person or entity, including Titus and the Enforcement Bureau, that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

2. Claim of Confidentiality. The Submitting Party may claim information as "Confidential Information" consistent with the definition of that phrase in Paragraph 1 of this Protective Order. The Commission, as defined herein, may, *sua sponte* or upon petition, determine that all or part of the information claimed as "Confidential Information" is not entitled to confidential treatment within the context of the captioned hearing proceeding.

3. Procedures for Claiming Information is Confidential. Information in the captioned hearing proceeding for which a claim of confidentiality is made shall be submitted under seal and shall bear on the front page in bold print, "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." Such information shall be segregated by the Submitting Party from all non-confidential information submitted to Secretary and/or the presiding Administrative Law Judge. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

4. Storage of Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

5. Access to Confidential Information. Confidential Information shall be made available only to Commission staff, Commission consultants and to each Reviewing Party, their counsel and staff. Before a Reviewing Party may obtain access to Confidential Information, counsel for the Reviewing Party must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

6. Disclosure of Confidential Information. Counsel to a Reviewing Party may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

7. Authorized Representatives. Authorized Representatives shall be limited to:

a. Counsel for the Reviewing Parties to this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;

b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding;

c. Commission personnel acting in their official capacities, including the presiding Administrative Law Judge and FCC hearing personnel; and

d. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

8. Filing of Declaration. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission with a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

9. Use of Confidential Information. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in the captioned hearing proceeding (including any subsequent administrative or judicial review) unless otherwise ordered by the Commission or a court of competent jurisdiction and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

10. Pleadings Using Confidential Information. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked:

"Confidential Information included pursuant to Protective Order, EB Docket No. 07-13;" and

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting

Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal. They shall not be placed in the Commission's Public File unless the Commission directs otherwise (with *notice to the Submitting Party and an opportunity to comment on such proposed disclosure*). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

13. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

14. Termination of Proceeding. Unless otherwise ordered by the Commission or a court of competent jurisdiction, within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made. Authorized representatives shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Any confidential information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 9 and 11 of this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

15. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other

proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

16. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

17. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

18. Authority. This Protective Order is issued pursuant to 47 C.F.R. § 0.457(f) and (g).

Attachment A

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FEDERAL COMMUNICATIONS COMMISSION
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DAVID L. TITUS)	FRN No. 0002074797
)	File No. EB-06-IH-5048
Amateur Radio Operator and Licensee of)	
Amateur Radio Station KB7ILD)	

DECLARATION

I, _____, hereby declare under penalty of perjury that I have read the Protective Order in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(date) _____

CERTIFICATE OF SERVICE

Shonnetta Ennis, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 21th day of September, 2007, sent by first class United States mail copies of the foregoing "Joint Motion for Approval of Approve Protective Order" to:

David S. Marshall, Esq.
Law Office of David S. Marshall
1001 4th Avenue, 44th Floor
Seattle, WA 98154
Counsel to David L. Titus

Chief Administrative Law Judge Richard L. Sippel*
Federal Communications Commission
445 12th Street, S.W., Suite 1-C768
Washington, D.C. 20054


Shonnetta Ennis

* Hand-Delivered